

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT WERWINSKI, JR., ELIZABETH	:	
C. WERWINSKI, JEAN C. COOK, DONNA	:	
COFFEY, JOSEPH COFFEY, JOAN	:	
McILHENNY, DARIA ZAHARCHUK	:	
JAMES DUNLAP on behalf of themselves	:	
and all others similarly situated	:	
Plaintiffs,	:	
	:	
v.	:	CIVIL ACTION
	:	
	:	NO. 00-943
FORD MOTOR COMPANY	:	
Defendant.	:	

**MEMORANDUM**

BUCK WALTER, J.

April 11, 2000

Presently before the Court is the Plaintiffs' Motion for Remand. For the reasons stated below, the Motion is Denied.

**I. BACKGROUND**

This putative class action was filed by Plaintiff on January 20, 2000 against Ford Motor Company ("Ford") in the Philadelphia County Court of Common Pleas. Plaintiffs' Complaint alleges that Ford manufactured and sold vehicles (the "Class Vehicles") that contained defective transmissions during the 1990 and 1995 model years. Plaintiffs allege that the defective transmissions have caused the vehicles to perform erratically and require premature repairs. Plaintiffs' Complaint asserts claims for 1) breach of express warranty, 2) breach of the implied warranty of merchantability, 3) fraudulent concealment and 4) violation of state

consumer protection statutes. The Plaintiffs seek compensatory and punitive damages, and injunctive and declaratory relief.

On February 22, 2000 Defendant filed a Notice of Removal to this Court.

Defendant claimed diversity jurisdiction as the basis for removal under 28 U.S.C. § 1441(b). The Plaintiffs argue that diversity jurisdiction is not proper because the amount in controversy does not exceed \$75,000.

## II. LEGAL STANDARD

Plaintiffs' motion is properly before this Court pursuant to 28 U.S.C. § 1447(c), which provides, in relevant part, that "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the cases shall be remanded."

In ruling on a motion for remand, "the district court must focus on the plaintiff's complaint at the time the petition for removal was filed...[and] must assume a true and factual allegation of the complaint." Steel Valley Auth. v. Union Switch and Signal Div., 809 F.2d 1006, 1010 (d.Cir.1987) (citation omitted), cert. dismissed sub nom. American Standard, Inc. v. Steel Valley Auth., 484 U.S. 1021 (1988). The burden is on the removing defendant to show the existence and continuance of federal jurisdiction. See Duke v. U.S. Healthcare, Inc., 57 F.d. 350, 359 (d.Cir.), cert. denied, 516 U.S. 1009 (1995). "The removal statutes 'are to be strictly construed against removal and all doubt should be resolved in favor of remand.'" Boyerv. Snap-on Tools Corp., 913 F.2d 108, 111 (d.Cir.1990) (quoting Steel Valley, 809 F.2d at 1010), cert. denied, 498 U.S. 1085 (1991). These principles have developed "[b]ecause lack of jurisdiction would make any decree in the case void and the continuation of the litigation in

federal court futile.” Brown v. Francis, 75 F.d.860,864(d.Cir.1996)( *quoting* Abels v. State Farm Fire & Cas. Co., 770 F.2d 26,29(d.Cir.1985)). Removal under § 1441(a) “is proper only if the federal district court would have had original jurisdiction if the case was filed in federal court.” Id.

### III. DISCUSSION

A district court shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States. 28 U.S.C. § 1332. Plaintiffs concede that there is complete diversity of citizenship. However, Plaintiffs argue that the cases should be remanded because the amount in controversy threshold has not been exceeded.

The general federal rule is to decide the amount in controversy from the complaint itself. Horton v. Liberty Mutual Ins. Co., 367 U.S. 348, 353 (1961). When the amount Plaintiffs seek is open-ended, as it is in this case, the amount in controversy is not measured by the low end of an open-ended claim, but rather by a reasonable reading of the value of the rights being litigated. See Angus v. Shiley, 989 F.2d 142, 145 (3d.Cir.1993). The Defendant, who has the burden of demonstrating that removal is proper, must demonstrate by a preponderance of the evidence that each Plaintiff claims more than the amount in controversy. <sup>1</sup>The preponderance of the evidence standard best preserves the “balance struck between the defendant’s right to remove

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1. There are generally three schools of thought concerning the burden that must be overcome by defendant to show that the amount in controversy has been alleged. District Courts in this circuit have applied all three, and the general agreement is that the Third Circuit has not expressly adopted any of the approaches. The “Legal Certainty” approach favors remand if it ever becomes legally certain that plaintiff could not recover an amount above \$75,000. See Meritcare v. St. Paul Mercury Ins. Co., 166 F.3d 214, 219 (3d.Cir.1999). A second approach would reject remand if a reasonable jury could award damages greater than the jurisdictional amount. See Angus, 989 F.2d at 146. Finally, other courts have adopted the preponderance of the evidence standard.

and the federal interest in limiting diversity jurisdiction." See Mercantev.Preston Trucking Co., Inc., Civ. A. No. 96-5904, 1997 WL 230826 (E.D. Pa. May 1, 1997). Although the Court favors the "preponderance" standard, under any formulation of the remand test, the amount in controversy requirement has been met.

In general, the rule is "long-standing and seemingly well-settled... that the claims of several plaintiffs, if they are separate and distinct, cannot be aggregated for purposes of determining the amount in controversy." Meritcare v. St. Paul Mercury Ins. Co., 166 F.3d 214, 219 (F.3d Cir. 1999) *quoting* 14 B Wright, Miller & Cooper, Federal Practice and Procedure § 3704, at 134 (1994). The Third Circuit has recently held that the Supplemental Jurisdiction statute, 28 U.S.C. § 1367, has preserved the prohibition on aggregation for diversity jurisdiction purposes. Id. at 222. In diversity-based class actions, the Supreme Court has held that class members may not aggregate their claims in order to reach the requisite amount in controversy, Snyder v. Harris, 394 U.S. 332, 338, 89 S.Ct. 1053, 1057 (1969), and that each member of the class must claim at least the jurisdictional amount. See Zahn v. International Paper Co., 414 U.S. 291, 301, 94 S.Ct. 505, 512 (1973). However, claims brought by a single plaintiff against a single defendant can generally be aggregated when calculating the amount in controversy, regardless of whether the claims are related to each other. See Snyder v. Harris, 394 U.S. 332, 335, 89 S.Ct. 1053, 1056 (1969) ("Aggregation has been permitted... in cases in which a single plaintiff seeks to aggregate two or more of his own claims against a single defendant."); see also 1 James Wm. Moore, Moore's Federal Practice P. 97, at 907-08 (2d ed. 1995);

In order to decide whether the amount in controversy requirement has been met, the Court must determine how much each Plaintiff sought in the original Complaint. The parties

seem to agree that the Complaint could be read as asking for the cost of repairing the damages transmissions, which would be approximately \$2,000-\$3,000 each. Both parties also agree that the amount awarded as compensatory damages could be trebled because the Complaint makes a claim under state consumer protection statutes (Count IV) See, e.g., Pa. Cons. Stat. §201.9.2. The Defendants argue that three other factors will push the amount in controversy above the \$75,000 threshold. These include 1) additional costs included in calculating the value of compensatory damages, 2) punitive damages, and 3) injunctive relief.

a. Compensatory Damages :

The Court must calculate what would be the maximum amount of compensatory damages that Plaintiff could recover. Courts in Pennsylvania have found that the amount in controversy in a suit under the UTPCPL is the purchase price of the car. See Palan v. Ford Motor Company, 1995 WL 476240 (E.D. Pa. August 8, 1995); Voorhees v. General Motors Corp., 1990 WL 29650 (E.D. Pa. 1990) (jury could find that Plaintiff was entitled to refund of the purchase price of the car); Adams v. General Motors Corp., 1990 WL 18850, \*2 (E.D. Pa. February 26, 1990); Pavese v. General Motors Corp., 1998 WL 57761, \*2 (E.D. Pa. Feb. 11, 1998) (damages calculated with actual lease payments made to date). With this support from cases in our district, the Court will use the purchase price of the Class Vehicles as the baseline for determining compensatory damages.

Plaintiffs suggest that they would not have purchased or leased the vehicles if not for Ford's fraudulent concealment. However, a jury might reasonably conclude that the Plaintiffs' were entitled to the purchase price of the vehicle as a way to make buyers whole. If the jury believed that Plaintiffs had been defrauded, they might easily award treble compensatory

damages of an amount that would include the buyer's purchase price. Assuming the purchase price to be approximately \$15,000, the Plaintiff's claim would be close to \$45,000 as a starting point. It should be noted that Plaintiffs' never specifically mention in the Complaint that they seek compensatory damages that only include the cost of repairing the defective transmissions.

The Local Rules of the Philadelphia Court of Common Pleas require that cases involving amounts in controversy below \$50,000 be sent to mandatory arbitration. The Plaintiffs', in an attempt to avoid the consequences of this rule and plead the jurisdiction of the Common Pleas Court, state that the amount in question exceeds \$50,000. Plaintiffs argue that the \$50,000 number is an aggregate amount that must be surpassed in order to avoid mandatory arbitration. Plaintiffs do, of course, recognize that for jurisdictional purposes of this federal Court, the claims of different plaintiffs cannot be aggregated. Nevertheless, Plaintiffs argue that the individual amounts claimed can be aggregated for purposes of passing the arbitration threshold. The Court rejects this reading of the Local Rule. Ford provides an affidavit in which the Philadelphia Arbitration Center administration section says that the standard procedure is not to aggregate claims in multi-plaintiff actions. The fact that Plaintiffs have alleged that their individual claims exceed \$50,000 does not mean their damage claims likewise exceed \$75,000. However, it does suggest that the Plaintiffs were seeking more than a mere \$2,000-\$3,000 in repair costs for each Plaintiff.

To this base figure of \$45,000, it might be appropriate to include collateral charges and out-of-pocket expenses. See Suberv. Chrysler Corp., 104 F.d. 578, 585 (d. Cir. 1997). Also, although § 1332 excludes "interest and costs" from the amount in controversy, attorney's fees are necessarily part of the amount in controversy if such fees are available to

successful plaintiffs under the statutory cause of action. Id. Attorney's fees are authorized in private actions under 73 Pa.C.S.A. §201-9.2(a). It would certainly not be unreasonable for attorney's fees to range between \$5,000 and \$10,000 for compensatory damages that amount to \$45,000. In either case, between attorneys' fees and collateral charges, the amount in controversy before punitive damages would likely be over \$50,000, but below the jurisdictional threshold of \$75,000.

b. Punitive Damages :

The Plaintiffs likewise request punitive damages. A federal court sitting in diversity looks to state rules governing the measure of damages and the availability of special and punitive damages. See Horton, 367 U.S. at 352-53. The Pennsylvania Consumer Protection Law (UTPCPL) explicitly states that a court may award "such additional relief as it seems necessary and proper" in addition to actual and treble damages. See 73 P.S. §201-9.2(a). The UTPCPL allows a court discretionary authority to award punitive damages in addition to actual and treble damages in cases where the court finds such additional relief to be "necessary or proper." See Aronson v. Credit Trust Corp., 7 F.Supp.2d 859, (W.D.Pa. 1998); Hamm v. Nikol, 659 A.2d 617, 620 (Pa. Commw. 1995) (appellate court affirmed trial court's award of twice plaintiff's actual damages, attorney's fees and costs on the basis that section 9.2 of the UTPCPL allows court the discretion to award treble damages and "such additional relief as it deems necessary or proper"); Adams v. General Motors Corp., 1990 WL 18850, \*2 (E.D.Pa. February 26, 1990) (punitive damages can be appropriate under §9.2 of UTPCPL).

The mere possibility that punitive damages may be awarded does not mean that they may automatically be used to calculate jurisdiction. See Id. However, the Plaintiff has

alleged facts that suggest punitive damages might be available, and both parties believe that the awarding of such damages are a possibility. It is not uncommon for Pennsylvania Courts to allow punitive damages that are at least as large as the award of compensatory damages. See Pikunsev.Kopchinski, 631 A.2d 1049, 1050 (Pa.Super.1993) (affirming an award of \$7,500 in punitive damages when compensatory damages were only \$7,100; Bemer Aviation, Inc.v. Hughes Helicopter, Inc., 621 F.Supp.290, 300-301 (E.D.Pa.1985); Marcone v. Penthouse International, Inc., 577 F.Supp.318, 322, 35-36 (E.D.Pa.1983) (punitive damages of \$200,000.00 awarded as opposed to only \$30,000.00 compensatory damages); In re Wagner, 74 B.R.898, 905-06 (Bankr.E.D.Pa.1987) (punitive damages of \$500.00 awarded, although slight degree of harm justified compensatory damages of only \$100.00). In this case, punitive damages would only have to be about half of the possible compensatory damages in order to exceed the \$75,000 threshold. Based on Plaintiffs' allegations, a reasonable jury could award punitive damages that would easily place the amount in controversy above \$75,000.

#### **IV. CONCLUSION**

The Court finds that Defendants have shown by a preponderance of the evidence that Plaintiffs have made allegations that could support the awarding of damages greater than \$75,000 per plaintiff. A reasonable jury could award an amount of damages in excess of \$75,000, and it is not legally certain that Plaintiffs would be prohibited from receiving such an amount. Therefore, there is no need to address whether the cost of injunctive relief should be considered when determining the amount in controversy. The Motion to Remand will be Denied.

An appropriate order follows.



**INTHEUNITEDSTATESDISTRICTCOURT  
FORTHEEASTERNDISTRICTOFPENNSYLVANIA**

ROBERTWERWINSKI,JR.,ELIZABETH	:	
C.WERWINSKI,JEANC.COOK,DONNA	:	
COFFEY,JOSEPHCOFFEY,JOAN	:	
McILHENNY,DARIAZAHARCHUK	:	
JAMESDUNLAPonbehalfofthemselves	:	
andallotherssimilarlysituated	:	
Plaintiffs,	:	
	:	CIVILACTION
v.	:	
	:	NO.00-943
FORDMOTORCOMPANY	:	
Defendant.	:	

**ORDER**

ANDNOW,this11thdayofApril,2000,uponconsiderationofPlaintiffs'  
MotionforRemand(DocketNo.3),andtheDefendant'sResponsethereto(DocketNo4);itis  
hereby **ORDERED** thatPlaintiffs'MotionisDenied.

BYTHECOURT:

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RONALDL.BUCKWALTER,J.